

White Collar Practice Alert

August 3, 2007

*The Foreign Corrupt Practices Act &
Risks of Doing Business in Nigeria**by Joseph P. Covington & Jessica Tillipman*

On July 2, 2007, the Department of Justice (DOJ) took an unusual course of action and sent letters to almost a dozen oil and oil services companies regarding potential violations of the FCPA. Specifically, DOJ is concerned with potential illegal payments to Nigerian customs agents made through Panalpina World Transport Holding Ltd., a Swiss shipping and logistics management company. The Securities and Exchange Commission (SEC) is conducting a related civil investigation as well. The letter asks firms to list the countries in which they worked with Panalpina in the past five years, and to disclose what they paid for Panalpina's services. The letter also asked each firm to meet separately with DOJ in Washington, D.C. Further, in July, DOJ held a meeting with oil and oil services companies to discuss the consequences of doing business in Nigeria.

This particular DOJ investigation is not surprising in light of the numerous acts of corruption that have recently taken place in Nigeria. US firms conducting business in Nigeria must be

particularly concerned with the Foreign Corrupt Practices Act (FCPA). Nigeria has long been known for its corrupt practices. Even those businesses who maintain strict internal controls and work hard to comply with US antibribery laws have difficulty with FCPA-compliance in this region. Corruption is so prevalent in Nigeria that it is nearly impossible to conduct business in the country without being asked to pay a bribe. This puts companies unwilling to pay the bribes at a severe competitive disadvantage.

In the past few years, a large percentage of FCPA enforcement actions have involved transactions in Nigeria:

- On July 23, 2007, a federal grand jury in Houston indicted Jason Edward Steph, a former executive of Willbros International Inc., on charges of conspiring to make corrupt payments to Nigerian officials in violation of the FCPA. Steph has been charged with conspiring to make over \$6 million in illegal payments to Nigerian officials in order to obtain and retain gas pipeline

construction business from a joint venture majority-owned and controlled by The Nigerian National Petroleum Corporation (NNPC), the state-owned oil company in Nigeria.

- On February 6, 2007, Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd., wholly owned subsidiaries of Vetco International Ltd., pled guilty to violating the anti-bribery provisions of the FCPA. In addition, Aibel Group Ltd., another wholly owned subsidiary of Vetco International, entered into a deferred prosecution agreement with DOJ regarding the same conduct. From 2002-2005, the companies allegedly made 378 corrupt payments totaling approximately \$2.1 million to Nigerian Customs officials in an attempt to obtain preferential treatment during the customs process. The settlement required Vetco Gray to pay astronomical fines because it was not the company's first violation of the FCPA with respect to its operations in Nigeria. On July 6, 2004, the

SEC settled enforcement action against ABB Vetco Gray and its subsidiaries for violating the books and records and accounting provisions of the FCPA. The SEC charged ABB Vetco Gray with making illegal payments totaling over \$1.1 million to government officials in Nigeria, Angola and Kazakhstan, in order to obtain business for its subsidiaries in those countries. In July 2006, the SEC settled civil actions against four former employees of subsidiaries of ABB Ltd. in an action related to the July 2004 corporate settlement. The SEC alleged that between 1999 and 2001 the employees paid bribes to Nigerian officials to obtain a contract to provide equipment for Nigeria's offshore Bonga Oil Field.

- Rep. William J. Jefferson made payments to Nigerian officials to advance the various business endeavors in which he and his family had financial interest. Jefferson allegedly negotiated and delivered the payments to a Nigerian official. On July 18, 2005, Jefferson met with a Nigerian official at the official's residence in Potomac, Md., and

offered him a bribe to induce him to use his position to assist in obtaining commitments from NITEL, the government-controlled main telecommunications service provider in Nigeria. Jefferson stored, in his freezer, \$90,000 of the \$100,000 in cash as part of the front-end bribe payment to the Nigerian official. The cash was separated into \$10,000 increments, wrapped in aluminum foil, and concealed inside various frozen food containers.

- Baker Hughes and a subsidiary paid \$44 million in April to settle criminal charges involving bribes in Kazakhstan and SEC civil charges involving payments elsewhere, including Nigeria, the largest combined penalty for such charges. Baker Hughes had a 2001 agreement not to pay bribes under an SEC settlement related to payments in Indonesia.

In addition to these recent enforcement actions, several companies are also conducting internal investigations into potential illegal activity in Nigeria. GlobalSantaFe Corp. has reported that, with the assistance of outside

counsel, it is conducting an internal investigation of its Nigerian operations. The company is focusing on whether its agents have fully complied with the FCPA when working with Nigerian customs agents. Similarly, Tidewater Inc., Global Industries Ltd., and Noble Corp. are also investigating FCPA compliance with respect to Nigerian customs agents.

A company has few choices when conducting business in Nigeria, and serious consideration should be give to the company's need to stay in or enter the Nigerian marketplace. If it is necessary, then very robust internal controls should be implemented to minimize the risk. FCPA issues are obviously complicated and fact specific. Consequently, if you have any questions about the information contained in this advisory, please contact any of the following attorneys:

Joseph P. Covington

at jcovington@jenner.com or
202 639-6035

Jessica Tillipman

at jtillipman@jenner.com or
202 639-6053